

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-031/14

Prishtinë/Priština, 9 December 2015

In the proceedings of:

Z.N.

Llapllasellë/Laplje Selo

Prishtinë/Priština

Appellant

vs.

B.B.

Str. Qemal Stafa p.n. Arbëria 3

Prishtinë/Priština

and

B.U.

Street CMZ Bresje L-1, Ulaz 1

Fushë Kosovë/Kosovo Polje

Appellees

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (KPCC) no. KPCC/D/R/159/2012 (case file registered at the KPA under the number KPA56143) dated 6 June 2012, after deliberation held on 9 December 2015, issues the following

JUDGMENT

1. **The appeal of Z.N. against the decision of the Kosovo Property Claims Commission no. KPCC/D/R/159/2012, dated 6 June 2012, is rejected as unfounded.**
2. **The decision of the Kosovo Property Claims Commission no. KPCC/D/R/159/2012, dated 6 June 2012 is confirmed as far as it concerns claim no. KPA56143.**

Procedural and factual background

1. On 28 December 2007, Z.N. (hereinafter: the Appellant) filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of ownership right and repossession of an apartment with surface of 36.20 m², Street CMZ Bresje, L-1, No. 18, Bresje, Municipality of Fushë Kosovë/Kosovo Polje (hereinafter: the claimed apartment).
He alleges that he lost possession of the claimed apartment on 1 June 1999 due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99.
2. To support his claim, he submitted *inter alia* the following documents:
 - Copies of two versions – one in Cyrillic and one in Latin alphabet - of a ‘Decision on allocation of apartment on lease for indefinite periode’ allegedly issued by the Fabrika Amortizera/Suspensions Factory Joint Stock Company (JSC) Prishtinë/Priština (henceforth also: the Suspension Factory), one with number 425 and one with number 425/1, and dated 4 February 1999, (henceforth: the Appellant’s Allocation decision). According to this document the claimed apartment was allocated to the Appellant for indefinite period of time and Appellant was obliged to conclude a contract on lease with

Public Housing Enterprise of Prishtinë/Priština under the terms of the Law on Housing;

- A Copy of ‘Contract on Purchase of apartment’, with number 3787, and dated 22 February 1999 (henceforth: Appellant’s Purchase contract), allegedly concluded between the Appellant as occupancy right holder and the Suspension Factory as allocation right holder. This contract carries a verification stamp in Cyrillic letters, allegedly issued by the Municipality Court of Prishtinë/Priština on 24 July 2008 with number OV.Br. 510/2008. According to this contract the claimed apartment is allegedly purchased by the Claimant;
 - A Certificate issued by the Suspensions Factory, No. 3878/2, and dated 22 February 1999. This document seeks to certify that the Claimant on 22 February 1999 paid the entire purchase price for the claimed apartment.
3. On 28 July 2008, KPA notified the claim by putting a poster on the claimed apartment. KPA found the claimed apartment occupied by B.U. . He did claim a legal right to the apartment and signed a notice of participation in the proceedings before KPA/KPCC. B.U. stated that he bought the claimed apartment from B.B. in 2002.
 4. On 4 August 2008, B.B. (hereinafter together with B.U. indicated as the Appellees) also approached KPA as responding party. He contested the Appellant’s claim by stating that the claimed apartment was allocated to him in 1987, that he used it since then, that he had to leave the apartment in January 1999, and returned in June 1999, and that he sold the apartment to B.U. in 2002.
 5. To support their response, the Appellees submitted *inter alia* the following documents:
 - The Decision of the Suspension Factory Prishtinë/Priština, Basic Organization of Associated Labor, Tools Shed and Maintenance, No. 1235, dated 9 February 1987 (henceforth: the Appellees’ Allocation decision). According to this document the claimed apartment was allocated to B.B. and his family members for use;
 - The ‘Contract on use of apartment’, No. 1193/1051, and dated 25 February 1987 (henceforth: the Appellees’ Contract on use). This contract is about the claimed apartment

and is concluded between B.B. and Public Housing and Business Enterprise of Prishtinë/Priština;

- A Copy of ‘Contract on Sale-Purchase of Immobility’ dated 25 June 2004. This (alleged) purchase contract regarding the claimed apartment is concluded between B.B. and B.U. j. The document does not contain a verification and certification stamp by a court;

- A Copy of a Certificate of the Department of Urbanism, Geodesy, Cadaster and Property of the Municipality of Fushë Kosovë/Kosovo Polje, number 06. No. 709, and dated 9 May 2007. This document is purporting to certify that the claimed apartment is in use by the holder of the possession right B.B. according to a lease contract no. 1193/1051 dated 25 February 1987.

6. On 22 August and 19 November 2008, and 11 May 2010, KPA tried to verify the Appellant’s Allocation decision and the Appellant’s Purchase contract. The officials of the Public and administrative organs (the Suspension Factory and the Public Housing Enterprise) stated that they do not have the Appellant’s Allocation decision. The officials of the Municipal Court of Prishtinë/Priština stated that the Appellant’s Purchase contract cannot be found since the same is not verified before the Court.
7. On 13 January 2009 and 11 May 2010, KPA found the Appellees’ Allocation decision and Appellees’ Contract on use at the Allocation right holder and at the Department for Urbanism.
8. In the Consolidated Verification Report, dated 25 October 2011, KPA concluded that the Appellant’s Allocation decision and the Appellant’s Purchase contract were negatively verified, while Appellees’ Allocation decision and Appellees’ Contract on use were positively verified.
9. The KPCC refused the claim. In the reasoning of its decision (paragraph 101 of the Cover decision), the KPCC indicated that the submitted evidences (Appellant’s Allocation decision and the Appellant’s Purchase contract) could not be verified and that the Claimant has failed to show that he had an ownership right over the claimed apartment immediately prior to or during the 1998-99 conflict. The KPCC further refers that the documents submitted by

Appellees (Appellees' Allocation decision and Appellees' Contract on use) are verified, and that B.B. in 2004 sold the claimed apartment to a third party, who currently lives in the claimed apartment.

10. On 7 November 2013 the KPCC decision was served on Appellant. He filed the appeal before the Supreme Court on 3 December 2013. On 3 December 2012 the KPCC decision was served on both Appellees. B.U. refused to sign the service receipt.
11. The appeal was served on B.B. on 21 February 2014 and on B.U. on 19 March 2014. Appellees did not submit a reply on the appeal.

Allegations of the parties:

The Appellant:

12. The Appellant alleges that the KPCC decision involves a fundamental error and serious misapplication of the law and is based on an erroneously and incompletely determination of the facts. The decision was not reasoned in a legal manner. KPCC erroneously based its decision on the documents submitted by Appellees as KPCC did not take into consideration the lawsuit filed at the Municipal Court of Prishtinë/Priština on 30 October 1992. He alleges that in that procedure on request of the Suspension Factory Appellees' Contract on use was annulled. He submits a copy of this lawsuit. Further, the Appellant alleges that the KPCC was obliged to cite the evidences which are taken into account and provide reasons on which the final conclusion was reached.

Legal reasoning:

Admissibility:

13. The appeal is filed within the 30 day period as prescribed in section 12.1 of UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No. 03/L-079 (henceforth: Law UNMIK 2006/50).

Merits of the appeal:

14. According to Section 3.1 of the Law UNMIK 2006/50 KPCC has the competence to resolve the following categories of conflict-related claims involving circumstances directly

related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999: a) ownership claims with respect to private immovable property, including agricultural and commercial property, and b) claims involving property use rights in respect of private immovable property, where the claimant for both categories is not now able to exercise such property rights.

15. From this provision follows that the Appellant has to prove his ownership right to the claimed apartment.
16. The appealed KPCC decision relies on the one hand on the reasoning that the Appellant failed to show that he had an ownership right over the claimed apartment prior to or during the 1998-99 conflict.
17. The Supreme Court agrees with this conclusion of the KPCC. The documents Appellant submitted to KPA to prove his alleged property right – the Appellant’s Allocation decision and the Appellant’s Purchase contract - were not positively verified and Appellant brings no convincing grounds in appeal to decide otherwise. So, he did not prove his ownership to the claimed property right. Already based on this reasoning his claim stands to be refused.
18. In the reasoning of its decision KPCC ascertains also that the Appellees claim a legal right over the claimed apartment by stating that B.B. has been using the claimed apartment since 1987 based on the Appellees’ Allocation decision and the Appellees’ Contract on use and that both documents were positively verified by the Executive Secretariat. In appeal Appellant challenges this establishment of facts by KPCC by stating that the Appellees’ Contract on use was annulled by the Municipal Court.
19. The Supreme Court does not have to examine whether these allegations of the Appellant are valid, because even if the Appellees’ Contract on use was annulled, that fact cannot lead to the conclusion that his own alleged ownership right on the claimed apartment is proven.
20. Based on this review, analyses and overall evaluation, the Supreme Court finally concludes that Appellant did not substantiate that the appealed decision issued by the KPCC involves

an erroneous and incomplete determination of the factual situation or any misapplication of the provisions of material and procedural law.

21. On the basis of the above and in accordance with section 13.3 (c) of Law UNMIK 2006/50 the Court decides as in the enacting clause.

Legal Advice:

Pursuant to Section 13.6 of Law UNMIK 2006/50 this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Urs Nufer, EULEX Registrar